BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD

| SAUL A. GUZMAN |) |
|---------------------------|------------------------|
| Claimant |) |
| V. |) |
| |) Docket No. 1,064,196 |
| CILLESSEN & SONS, INC. |) |
| Respondent |) |
| and |) |
| |) |
| EMCASCO INSURANCE COMPANY |) |
| Insurance Carrier |) |

ORDER

Respondent and insurance carrier (respondent) request review of the July 15, 2016, preliminary hearing Order entered by Administrative Law Judge (ALJ) Gary K. Jones. Claimant appears by Dennis L. Phelps and respondent appears by Kirby A. Vernon, both of Wichita, Kansas.

FACTUAL SUMMARY AND ISSUES

Claimant's application for hearing alleges a series of repetitive trauma each and every day with a statutory injury date of March 26, 2012. There was a preliminary hearing on July 14, 2016, at which claimant requested respondent be ordered to pay medical bills and authorize medical treatment for his right upper extremity. Respondent denied the alleged series arose out of and in the course of his employment, including whether the "prevailing factor" requirements² could be proven. Also raised was whether respondent was given timely notice pursuant to K.S.A. 2011 Supp. 44-520.

The ALJ entered two Orders on July 15, 2016. The Order of which respondent requests review provides in pertinent part:

The Court finds it would be helpful to have an IME done. The Claimant's work activities in construction appear to be the type of work that could cause some type of wrist injury, although whether it caused the type of problem the Claimant had or has is in question. Dr. Gabriel gave an opinion regarding an injury occurring on a single accident date, and the Claimant has alleged a repetitive trauma. Dr. Gabriel

¹ Only facts relevant to the Board's decision are included in this Order.

² K.S.A. 2011 Supp. 44-508(e) and K.S.A. 2011 Supp. 44-508(f)(2)(A)(ii) and (iii).

does not explain his conclusion. On the other hand, Dr. Fluter did his IME at the Claimant's request and it was done over four years after the alleged accident.

The Claimant's Preliminary Hearing requests are taken under advisement pending an IME which is being ordered by separate order. The parties may schedule further hearings with the Court, if they deem it necessary, after the IME report is received.³

Respondent requests review of these issues:

- 1. Whether claimant sustained personal injury arising out of and in the course of his employment through repetitive trauma?
- 2. Whether claimant's work activity was the prevailing factor causing his medical condition and need for treatment?

The second Order formally appointed Dr. Pat Do to perform the neutral medical evaluation (IME), and requested the doctor address, *inter alia*, whether claimant's alleged accident or repetitive trauma was the prevailing factor in causing claimant's injury, need for treatment and resulting disability or impairment, if any.

Analysis and Conclusions

The Board does not have jurisdiction to review all ALJ decisions. Among the decisions the Board can review are preliminary hearing Orders, but only under the specific circumstances detailed in K.S.A. 2011 Supp. 44-534a(a)(2) and K.S.A. 2011 Supp. 44-551(i)(2)(A).

In this claim, the ALJ made no findings on claimant's requests for preliminary relief or on respondent's defenses. The ALJ, by separate Order which is not before the Board, appointed a neutral physician, as he had the authority to do pursuant to K.S.A. 2011 Supp. 44-516.⁴ All other issues were specifically taken under advisement. Hence, the ALJ made no findings the Board has jurisdiction to review and the application for Board review must accordingly be dismissed for lack of jurisdiction.

DECISION

WHEREFORE, respondent's application for review is dismissed for lack of jurisdiction.

³ ALJ Order (July 15, 2016) at 2.

⁴ See, e.g., *Myers v. Four B Corporation,* No. 1,043,611, 2009 WL 3710748 (Kan. WCAB October 28, 2009).

| T IS SO ORDERED. |
|---|
| Dated this day of October, 2016. |
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| HONORABLE GARY R. TERRILL BOARD MEMBER |

c: Dennis L. Phelps, Attorney for Claimant phelpsden@aol.com

Kirby A. Vernon, Attorney for Respondent and its Insurance Carrier cvernon@kirbyavernon.com kvernon@kirbyavernon.com

Honorable Gary K. Jones, Administrative Law Judge